

**SUBSTITUTE FOR
HOUSE BILL NO. 4399**

A bill to amend 1984 PA 274, entitled
"Michigan antitrust reform act,"
by amending section 4a (MCL 445.774a), as added by 1987 PA 243.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4a. ~~(1) An employer may obtain from an employee an~~
2 ~~agreement or covenant which protects an employer's reasonable~~
3 ~~competitive business interests and expressly prohibits an employee~~
4 ~~from engaging in employment or a line of business after termination~~
5 ~~of employment if the agreement or covenant is reasonable as to its~~
6 ~~duration, geographical area, and the type of employment or line of~~
7 ~~business. To the extent any such agreement or covenant is found to~~
8 ~~be unreasonable in any respect, a court may limit the agreement to~~
9 ~~render it reasonable in light of the circumstances in which it was~~



1 ~~made and specifically enforce the agreement as limited.~~

2 ~~(2) This section shall apply to covenants and agreements which~~
3 ~~are entered into after March 29, 1985.~~

4 (1) Except as otherwise provided in subsection (2), a business
5 shall not do any of the following:

6 (a) Enter into or attempt to enter into a noncompete agreement
7 with a worker.

8 (b) Obtain or attempt to obtain a noncompete agreement from a
9 worker.

10 (c) Enforce or attempt to enforce a noncompete agreement
11 against a worker or former worker.

12 (d) Represent that a noncompete agreement applies to a worker
13 or former worker.

14 (2) Subsection (1) does not apply if both of the following
15 conditions are met:

16 (a) Either of the following applies to the worker:

17 (i) The worker is an owner of the business and the worker is
18 selling the business or the worker's full or partial ownership
19 interest in the business.

20 (ii) The worker is responsible for the sale of all or
21 substantially all of the business's operating assets.

22 (b) The noncompete agreement meets all of the following
23 conditions:

24 (i) Protects only the business's reasonable competitive
25 business interests.

26 (ii) Has a reasonable duration.

27 (iii) Restricts competition only in the relevant market.

28 (iv) Restricts competition only to the same type of trade or
29 commerce.



1 (3) All of the following are void and unenforceable:

2 (a) A noncompete agreement entered into or obtained in
3 violation of this section.

4 (b) A noncompete agreement that violates this section.

5 (c) A term in an agreement that does any of the following:

6 (i) Purports to waive a requirement of this section.

7 (ii) Requires a worker to adjudicate an action described in
8 subsection (4) in another state.

9 (iii) Deprives a worker of the substantive protection of the
10 laws of this state with respect to a claim described in subsection
11 (4).

12 (iv) Requires a worker to pay the cost, or any portion of the
13 cost, to arbitrate a claim related to the noncompete agreement.

14 (4) A worker aggrieved by a violation of this section may
15 bring an action to recover damages. A court shall award both of the
16 following to a plaintiff who prevails in an action brought under
17 this subsection:

18 (a) The actual costs of the action that were necessary to
19 defend against enforcement of the noncompete agreement or to void
20 or limit the agreement, including, but not limited to, reasonable
21 attorney fees.

22 (b) All income lost as a result of actual or threatened
23 enforcement of the noncompete agreement or the unreasonable terms
24 of the noncompete agreement.

25 (5) This section does not limit the enforceability of either
26 of the following:

27 (a) An agreement that prohibits a worker from disclosing
28 confidential information or trade secrets.

29 (b) An agreement that prohibits a worker from soliciting work



1 from a business if all of the following conditions are met:

2 (i) The worker provides work for the business.

3 (ii) The worker receives annual remuneration from the business
4 at a rate that is more than 200% of the last published federal
5 poverty line for a family of 3 individuals.

6 (iii) The agreement expires 1 year or less after the last date
7 that the worker provides work for the business.

8 (6) This section, as amended by the amendatory act that added
9 this sentence, applies to a noncompete agreement that is entered
10 into before, on, or after the effective date of that amendatory
11 act.

12 (7) As used in this section:

13 (a) "Business" means a corporation, business trust,
14 partnership, association, or any other legal entity.

15 (b) "Federal poverty line" means the poverty line as revised
16 by the Secretary of the United States Department of Health and
17 Human Services under 42 USC 9902.

18 (c) "Noncompete agreement" means an agreement between a
19 business and a worker that prohibits the worker from, penalizes the
20 worker for, or functions to prevent the worker from doing any of
21 the following after the worker's work with the business ends:

22 (i) Seeking or accepting work with a different business.

23 (ii) Operating a business.

24 (d) "Worker" means an employee, independent contractor,
25 extern, intern, volunteer, or apprentice.

26 Enacting section 1. This amendatory act takes effect 90 days
27 after the date it is enacted into law.

